

**MINUTES FOR THE BOARD OF ADJUSTMENT MEETING**

February 26, 2010

- I. **ATTENDANCE** - The Chairman called the meeting to order at 1:01 p.m. in the Council Chambers, 200 East Main Street, on February 26, 2010. Members present were Chairman Peter Brown, Louis Stout, James Griggs, Barry Stumbo, Jan Meyer and Kathryn Moore (arrived at 1:08 p.m.). Others present were Jim Hume of the Division of Building Inspection; Chuck Saylor of the Division of Engineering; Jim Gallimore of the Division of Traffic Engineering; and Rochelle Boland of the Law Department. Staff members in attendance were Jim Marx, Barbara Rackers and Wanda Howard.

- II. **APPROVAL OF MINUTES** – The Chairman announced that the minutes of the November 20, 2009 meeting would be considered at this time.

Action – A motion was made by Mr. Griggs, seconded by Mr. Stumbo, and carried unanimously (Moore absent) to approve the minutes of the November 20, 2009 meeting.

III. **PUBLIC HEARING ON ZONING APPEALS**

Swearing of Witnesses – Prior to sounding the agenda, the Chairman asked all those present who wished to speak at today's meeting to raise their right hand and be sworn. He administered the oath to numerous citizens in attendance.

- A. **Sounding The Agenda** - In order to expedite completion of agenda items, the Chairman sounded the agenda in regard to any postponements, withdrawals, and items requiring no discussion.

1. **Postponement or Withdrawal of any Scheduled Business Item** - The Chairman announced that any person having an appeal or other business before the Board may request postponement or withdrawal of such at this time.
  - a. **A-2010-17: SAYRE CHRISTIAN VILLAGE** - appeals for an administrative review to determine that off-street parking on two separate lots should be considered as accessory to a nursing home, in a Single-Family Residential (R-1C) zone, on properties located at 3773 and 3789 Belleau Wood Drive. (Council District 4)

The Staff Recommended: Disapproval, for the following reasons:

1. The two lots that comprise the subject property are located in a Single Family Residential (R-1C) zone, which does not allow a nursing home as a principal permitted use or as a conditional use according to the current provisions of Article 8-7 of the Zoning Ordinance.
2. The proposed parking lots cannot be considered as accessory in nature, because they are not intended to serve a detached single family residence or a park/playground, which are the only principal permitted uses in the R-1C zone.
3. No compelling arguments or information of any kind have been presented by the appellant to support that the proposed parking lots can be permitted based on the current provisions in the Zoning Ordinance for uses in the R-1C zone.

Mr. Marx acknowledged that a letter of withdrawal from the applicant had been received by the staff. No action by the Board regarding the applicant's request was necessary.

2. **No Discussion Items** - The Chair will ask if there are any other agenda items where no discussion is needed...that is, (a) The staff has recommended approval of the appeal and related plan(s), (b) The appellant concurs with the staff's recommendations. Appellant waives oral presentation, but may submit written evidence for the record, (c) No one present objects to the Board acting on the matter at this time without further discussion. For any such item, the Board will proceed to take action.
  - a. **V-2010-19: WILLIAM JOHNSTON** - appeals for variances to: 1) reduce the required off-street parking for a

restaurant/bar by 50%; and 2) eliminate the required vehicular use area screening (landscaping), in a Neighborhood Business (B-1) zone, on property located at 157 Jefferson Street (Council District 2).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. The subject property is located in an old downtown neighborhood where few properties comply with current requirements for off-street parking and landscaping. On-street parking is available in the immediate vicinity of the subject property on Jefferson Street.
- b. Because the subject property is centrally located within the defined Infill and Redevelopment area, granting the requested variances will not result in an unreasonable circumvention of the requirements of the Zoning Ordinance. The appellant is attempting to create an opportunity for a viable mixed-use project, and has taken steps (through the provision of an access easement) to improve the off-street parking potential for the subject property.
- c. The small size of the lot, with a limited amount of lot frontage, is a special circumstance that contributes to justifying the parking and landscaping variances that have been requested.
- d. Strict application of the Zoning Ordinance would necessitate that a very small building be constructed on this property, which would significantly limit the potential for any mixed use and likely threaten the viability of any business use otherwise allowable in this zone.

This recommendation of approval is made subject to the following conditions:

1. The property shall be developed in accordance with the submitted application and site plan, with the understanding that some modifications to the proposed 5-space parking lot may be required to satisfy requirements of the Division of Traffic Engineering.
2. The final design of the 5-space parking lot shall be subject to review and approval by the Division of Traffic Engineering.
3. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
4. Leasing or shared parking agreements, for parking areas within 300' of the proposed building, shall be obtained for the balance of required parking (approximately two spaces) not provided by the 5-space parking lot. This agreement(s) shall be in a format acceptable to the Department of Law and the Division of Building Inspection, and shall be finalized prior to the issuance of a building permit.
5. A 6' tall wooden privacy fence shall be erected along the easterly side property line from the rear corner of the building to the rear property line. Such a fence shall be maintained at that location for as long as the adjoining property is used for a residential purpose.

Representation – William Johnston was present. Chairman Brown asked if he had reviewed the recommended conditions for approval of this request, and if he and the appellant would agree to abide by them. Mr. Johnston replied in the affirmative.

Staff Comment – Mr. Marx emphasized that condition #1 may require, by potentially just a few inches, that one parking space be eliminated from the rear yard area shown on the site plan for this application, and that the final parking area design must be approved by the Division of Traffic Engineering.

Action – A motion was made by Mr. Stout, seconded by Ms. Meyer, and carried unanimously to approve **V-2010-19: WILLIAM JOHNSTON** – an appeal for variances to: 1) reduce the required off-street parking for a restaurant/bar by 50%; and 2) eliminate the required vehicular use area screening (landscaping), in a Neighborhood Business (B-1) zone, on property located at 157 Jefferson Street, for the reasons provided by the staff, and subject to the five conditions recommended.

- b. **C-2010-14: ANCHOR BAPTIST CHURCH** - appeals for a conditional use permit to operate a school for academic instruction (middle school) in a Planned Neighborhood Residential (R-3) zone, on property located at 3601 Winthrop Drive (Council District 9).

The Staff Recommended: Approval, for the following reasons:

- a. Granting the requested conditional use permit should not adversely affect the subject or surrounding properties. The proposed school will have no more than 100 students with just six classrooms, so the existing 140-space parking lot will be more than adequate. The access drive and parking lot are already designed to easily accommodate vehicle stacking and circulation needs. Construction of new facilities will not be required.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. The school shall be established in accordance with the submitted application and site plan, with enrollment not to exceed 100 students.
2. An occupancy permit shall be obtained from the Division of Building Inspection prior to opening the school.
3. The dropping off and picking up of students shall be managed to ensure that vehicles do not stack onto Winthrop Drive, with a circular traffic flow around the south side of the parking lot to be maintained that allows vehicles to conveniently exit the property.

Representation - John Rockaway and John Culler were present representing the church. Chairman Brown asked if the church had reviewed the three recommended conditions, and if he and the appellant would agree to abide by them. Mr. Rockaway replied that the church had reviewed the conditions, and would abide by them.

Board Questions – Chairman Brown asked if the church had built Buildings #1 & #3 as depicted on the submitted site plan, and if the new classes will be held in building three. Both men replied in the affirmative.

Mr. Stout asked about the type of academic instruction that was to be conducted at this location. Mr. Rockaway replied that this school will become part of Trinity Christian Academy, and would provide space for their 7<sup>th</sup> and 8<sup>th</sup> grade classrooms.

Action – A motion was made by Ms. Meyer, seconded by Mr. Stout, and carried unanimously to approve **C-2010-14: ANCHOR BAPTIST CHURCH** - appeals for a conditional use permit to operate a school for academic instruction (middle school) in a Planned Neighborhood Residential (R-3) zone, on property located at 3601 Winthrop Drive, for the reasons provided by the staff, and subject to the three recommended conditions.

- B. Transcript or Witnesses - Any applicant or objector to any appeal before the Board is entitled to have a transcript of the meeting prepared at his expense and to have witnesses sworn.
- C. Variance Appeals - As required by KRS 100.243, in the consideration of variance appeals before the granting or denying of any variance the Board must find:

That the granting of the variance will not adversely affect the public health, safety or welfare, will not alter the essential character of the general vicinity, will not cause a hazard or a nuisance to the public, and will not allow an unreasonable circumvention of the requirements of the zoning regulations. In making these findings, the Board shall consider whether:

- (a) The requested variance arises from special circumstances which do not generally apply to land in the general vicinity, or in the same zone;
- (b) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant; and

- (c) The circumstances are the result of actions of the applicant taken subsequent to the adoption of the zoning regulation from which relief is sought.

The Board shall deny any request for a variance arising from circumstances that are the result of willful violations of the zoning regulation by the applicant subsequent to the adoption of the zoning regulations from which relief is sought.

1. **V-2010-18: LEX PROPERTIES, LLC** - requests variances to: 1) reduce the required side street side yard (along Lou Johnson Way) from 10 feet to 5 feet; and 2) increase the maximum allowed number of parking spaces from two to three on two adjoining lots, both variances for the purpose of accommodating construction of single family residences, in a Planned Neighborhood Residential (R-3) zone, on properties located at 174 and 176 Prall Street (Council District 3).

The Staff Recommended: Approval of a side street side yard reduction (along Lou Johnson Way) from 20' to 9', for the following reasons:

- a. A reduction to 9' should not adversely affect the public health, safety or welfare, nor significantly alter the character of the general vicinity. Lou Johnson Way is a very short alley that has no well defined character in terms of building location or other streetscape features. It dead ends at the apartment complex to the south of the subject property, and has fairly limited use.
- b. Each of the proposed lots, although relatively narrow, actually exceeds the minimum frontage requirement of the Zoning Ordinance (25'), even if the subject property is subdivided into lots with 38' and 32' of frontage, respectively. Since the property is at a corner location, this is reasonably considered as a special circumstance that justifies at least some reduction in the required side street side yard. Reduced side street side yards are common in the defined Infill and Redevelopment Area, based on former Zoning Ordinances.
- c. Strict application of the Zoning Ordinance would seriously compromise the ability of the appellant to subdivide the property in a manner that makes the created corner lot reasonably usable, with any residence there limited to a width of less than 20', depending on how the available frontage is split between the two proposed lots.
- d. Although the need for a variance has resulted from the desire of the appellant to subdivide this small property, lot frontage variances have not been requested. The appellant is making a reasonable effort to make residences on the proposed lots as functional as possible and an improvement to the neighborhood, while still providing some open space and landscape buffers.

This recommendation of approval is made subject to the following conditions:

1. The residences shall be constructed in accordance with a revised site plan (relative to the previously revised plan dated 02/01/10) showing the following: (1) a 9' side street side yard setback along Lou Johnson Way; (2) a continuous 5' wide landscape buffer along Lou Johnson Way, from Prall Street to the rear property line (as adjusted to maintain sight distances and an access opening); (3) a continuous 3' wide landscape buffer along the rear property line extending around the property corner and up the side property line of the easterly lot to the rear corner of the proposed dwelling on that lot; (4) a curbed internal landscape island, with two small trees, of at least 6' in width and 18' in length; (5) a notation that the residences on each lot will have a maximum depth of 30' (not including the 6' by 18' front porches); and (6) an access easement that complies with requirements of the Division of Traffic Engineering and minimizes interruption of the 5' landscape buffer to be provided along Lou Johnson Way.
2. All necessary permits shall be obtained from the Division of Building Inspection prior to construction.
3. A detailed landscaping plan shall be prepared, and approved by the Landscape Examiner with the Division of Building Inspection, prior to the issuance of any building permits. Plantings within the 5' wide buffer along Lou Johnson Way shall consist of street trees and hedges designed to prevent the parking of vehicles along the edge of the right-of-way. All plantings and buffers shall be maintained in accordance with the requirements of that approved plan.
4. The final design of the off-street parking areas and access easement shall be subject to review and approval by the Division of Traffic Engineering.
5. Action of the Board shall be reflected on the certified and recorded Final Record Plat for the subject property.

The Staff Recommended: Withdrawal (or in the alternative, Disapproval) of the requested parking variance, for the following reason:

- a. Up to three off-street parking spaces for each proposed lot is allowed at this location, due to the restricted parking conditions on Prall Street, pursuant to Article 16-4(c)(5) of the Zoning Ordinance.

(Chairman Brown proceeded to the next case on the agenda C-2010-13: OGUZ SARIYILDIZ.)

**D. Conditional Use Appeals**

1. **C-2010-13: OGUZ SARIYILDIZ** - appeals for a conditional use permit to provide family child care for up to 12 children in a Two-Family Residential (R-2) zone, on property located at 235 Sherman Avenue (Council District 5).

The Staff Recommended: Approval, for the following reasons:

- a. Providing family child care for up to 12 children at this location during normal working hours on Monday through Friday should not adversely affect the subject or the surrounding properties. Off-street parking and the outdoor play area to be provided will exceed the minimum requirements of the Zoning Ordinance.
- b. All necessary public facilities and services are available and adequate for the proposed use.

This recommendation of approval is made subject to the following conditions:

1. Family child care for up to 12 children may be provided in accordance with the submitted application and site plan, on Monday through Friday from 6:30 AM to 6:30 PM.
  2. All necessary permits, including an occupancy permit, shall be obtained from the Division of Building Inspection prior to opening the facility.
  3. A fenced outdoor play area of at least 900 square feet shall be provided and maintained in accordance with the requirements of the Division of Building Inspection. This fenced play space shall be arranged to exclude the rear vehicular parking area on the subject property.
  4. Care to be provided shall at all times comply with the requirements of the Kentucky Cabinet for Health and Family Services.
  5. This conditional use shall become null and void should the appellant no longer own or reside at this dwelling.
3. **C-2010-15: VINEYARD COMMUNITY CHURCH** - appeals for a conditional use permit to establish a church in an existing building in a Light Industrial (I-1) and a Planned Neighborhood Residential (R-3) zone, on property located at 501 West Sixth Street (Council District 1).

The Staff Recommended: Postponement, for the following reasons:

- a. As currently proposed, this church facility has insufficient off-street parking for the 400 to 500-seat sanctuary that has been requested. Additional time is needed for the appellant to locate off-site parking that could be leased or shared within a few hundred feet of this location.
- b. On-street parking at this location is potentially problematic, as there are two well established nearby churches that depend heavily on street parking. The question of how additional demands for on-street parking can be satisfied, without adversely impacting those existing churches or the surrounding residential properties, should be examined by the appellant in some sort of quantitative manner before their conditional use request is considered by the Board.
- c. Given the possibility of a postponement of this request, the appellant should explore alternative parking options, such as providing a shuttle service, that might reduce the demand for on-street parking and minimize the potential for disturbances to nearby residents.

**E. Administrative Review**

None Remaining

- IV. **BOARD ITEMS** - The Chair will announce that any items a Board member wishes to present will be heard at this time.

- V. **STAFF ITEMS** - The Chair will announce that any items a Staff member wishes to present will be heard at this time.

- A. **House Bill 55 Training Opportunity** - There will be an APA audio-conference in the Division of Planning Conference Room on Wednesday, March 17, 2010, beginning at 4:00 p.m. The title of this conference is "Redevelopment and Revitalization for a New Era" and will count toward 1.5 hours of House Bill 55 training credit for Board of Adjustment and Planning Commission members, as well as staff.

- VI. **NEXT MEETING DATE** - The Chair will announce that the next meeting date will be March 26, 2010.
- VII. **ADJOURNMENT** - If there is no further business, the Chair will declare the meeting adjourned.